(1) Supreme Court, U.S.
FILED

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NO_____

In The

SUPREME COURT OF THE UNITED STATES

In re:

RALPH URBAN,

Debtor/Petitioner

v.

WILLIAM C. HURLEY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIERCUIT

PET I TION FOR A WRIT OF CERTIORARI

RALPH URBAN, petitioner pro-se
PO BOX 1010
New York, New York 10276

41pp

QUESTIONS PRESENTED

1. Whether the circuit court denied equal protection refusing to review denial of injunctive relief against trespasser seeking to acquire title to Estate Property by "adverse possession;" on the ground Bankruptcy Court did not issued a "final order;" ignoring 28USC1292(a)(1).

2. Whether bankruptcy court has jurisdiction to review and repair vague state court judgments in a Chapter 11 case, when 14th Amendment Violations of "taking clause" are raised, and are pending in state appeals upon bankruptcy filing.

3. Should this Court exercise its supervision over a 14 year Real Estate controversy that has languished in bankruptcy court ten (10) years.

4. Whether a post-petition "foreclosure" against a trustee (holding mere legal title) is binding against a beneficiary without notice. And, if the beneficiary a Chapter 11 debtor in (actual) possession of the land, is that "foreclosure" VOID under the "Code" (11USC362(a)(4)), which prohibits all foreclosures.

5. Whether an offended entity has a fundamental right to an order of contempt (under 11USC362(h)), and is the refusal of the BC to entertain such a motion appealable to the DC.

6. Whether bankruptcy court violated the

"taking clause" by imposing a post-petition "judicial estoppel" precluding a pre-petition Reversion of Title to Estate real estate because a debtor did not list "Reversion" in the Schedules.

7. Whether it's a 5th Amendment denial of due process for the lower courts to REFUSE to enforce Automatic Stay 11USC362(a)(**3**), and 362h, against an offending entity with a 14 year history of Civil Rights violations against minority/disabled debtor.

8. Whether a "finding" by bankruptcy court, that an Estate "lost" title to land through a post-petition "foreclosure" followed by a change in venue to deal with it, is reviewable as a "final" order.

9. Whether the circuit court erred by refusing to review a district court order transferring venue for a title "trial" which is barred by Res Judicata; Direct Estoppel; Statutes of Frauds, Parol Evidence Rule; and a State's Statutes of Limitations.

10. Whether the circuit court denied equal protection by refusing to review the finality of Reversion of Title to real estate by operation, (in a Chapter 11 Estate,) Triggered and Determined by two (2) pre-petition state court judgments.

11. Whether the Second Circuit is in conflict with the Fourth Circuit in *Budget v Better Homes*, 804 F2d 289 (1986), by refusing to stop criminal trespass attempting to "take possession" of Estate real estate (listed in the Schedules; Adversarial

Complaint; and Lis Pendens, as Estate Property.)

12. Whether the Second Circuit is in conflict with the Superior Court of Virginia, in *Tapscott v Cobbs*, 52 Va. 172 (1855) (the prior possessor wins Rule;) holding that in a muddy land/title dispute, the prior possessor keeps possession!

13. Is the circuit court conflict with the Court of Appeals of North Carolina as in Newbern v Barnes, 165 SE 2d 526 (1969,) by refusing to review a DC order affirming a venue transfer for the purpose of "recovering" title from an illegal foreclosure.

14.Whether it's a violation of the ban on discrimination in employment in the 1964 Civil Rights Act, and Americans with Disabilities Act, for a self-employed disabled Veteran (dubbed a "non citizen" from Puerto Rico,) to have his business systematically trashed, to make him unemployed.

15. Whether the lower courts owe a duty to apply the Balancing Test, in the Free Exercise Clause to the First Amendment; when ordering a venue change for the "benefit" of defendants, to consider a "less burdensome alternative" than to send plaintiff to a district where he has made a covenant with God not to litigate.

16. Whether there is an (express or implied) "consent of the People" Clause in Article I of the US Constitution that require legislators to write laws in

simple English (e.g.tax foreclosure) that the average American can understand, without expensive lawyers (out of reach of most Americans) or vexatious litigation (such as this) to untangle.

17. Whether it is unconstitutional for a state to give a county tax officer (with no legal training) the arbitrarily right to execute a "deed" (that purportedly conveys land "title",) without ANY legal Notice, or judicial intervention what-so-ever.

PARTIES TO THE PROCEEDING

(both in state case, and Adversarial Proceding)

WILLIAM C. HURLEY, by
Shapiro & Rosenbaum, 2 State Street, suite 1100
Rochester, New York 14614
Tel 716-232-2282, David H. Ealy, esq.
(no substitution of attorney filed)

LINDA HAAG, by
Learned & Learned
449 E. Water Street
Elmira, New York 14901
Tel 607-734-1519, Phil Learned, esq.
(did not participate in appeals below)

GERALD TUTTLE, never answered the adversarial complaint, and has not been seen nor heard from by petitioner (or the Courts) for approx. 12 years; and for the purposes of this action should be presumed dead (under New York's seven (7) year Rule.)

The County of Yates was not a party in the state cases at issue, and did not participate in this appeal.

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CITATIONS

Budget v Better Homes, 804 F2d 289 (4th Cir. 1989)

Evans v Abney, 396 US 435 (1970)

Tapscott v Cobbs, 52 Va. 172 (1855)

Newbern v Barnes, 165 SE 2d 526

STATUTES:

28USC1292(a)(1) injunctive rel appeal

28USC1257(2) appeal from state highest court

11USC362(a)(3) prot of debtor's poss of prop

11USC362h rec of dam by debtor & Estate

11USC541(a)(1) Auto Stay of all proceedings

NYS-RPAPL, sec 853 (3x damages against lawless disruptions to possession of real estate.)

NYS-RPTL, sec 1164 (consolidation of prior actions) there is no consolidation in this case.

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JURISDICTION

(i) Date of the orders to be reviewed:

10-12-01, 2nd Circuit, USCA, dismissed appeal for alleged lack of jurisdiction.

5-10-01, US District Court, SDNY, affirms BC venue transfer and denies all injunctive relief.

8-14-00, US Bankruptcy, SDNY, on Remand again refuses to deal with 8-24-96 injunctive relief against Hurley's ongoing trespass; and denies injunctive relief to stop Hurley;'s ongoing theft of property.

3-28-98, 2nd Circuit, USCA, dismisses appeal for alleged lack of jurisdiction.

1-12-98, US District Court, SDNY, merely Remands '96 BC refusal to stop Hurley's ongoing trespass back to Bankruptcy Court, SDNY.

8-24-96, US Bankruptcy Court, SDNY, denies injunctive relief to stop Hurley's ongoing trespass.

(ii) No rehearing.

(iii) No cross petition.

(iv) Jurisdictional Statutes: 28 USC 1292(a)(1); 28USC1251(b)(2); 28 USC 1334(a); 28 USC 158(a) & (d); 28 USC 1257(2).

(v) No U.S. as a party.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USC 1292. Interlocutory decisions:

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, **refusing** or dissolving **injunctions**, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

11USC362(a)(3) prohibits any attempt to take possession of property away from a debtor, or a Bankrupt Estate.

11USC362(a)(4) prohibits any and all foreclosures against any Estate Property listed in the Schedules.

11USC362h party injured by any violations of sec362a shall recover damages and attorneys' fees.

STATEMENT OF THE CASE

Seven (7) years ago, offending entity Hurley (a political insider and self confessed political "power broker," 1) talked his political associates in Yates County to conduct an illegal tax "foreclosure" of Proof of Claim # 3, involving 75 acres of Estate Property listed in the Bankruptcy Schedules; Adversarial Complaint; and Lis Pendens as Estate Property, and "sell" him a tax deed to that land.

He then with FULL Knowledge that he had no legal title to the land, and in open defiance for the Automatic Stay (11USC362(a)(3), proceeded to attempt to "take" possession of that land away from petitioner and the Estate by use of violence, vandalism, theft, and terrorist threats.

Petitioner is entitled to immediate emergency injunctive relief. And as a matter of equal protection, is entitled to have the Automatic Stay, 11USC362(a)(3) enforced against Hurley.

Petitioner has nowhere else to turn for help.

ARGUMENT

Reasons for Granting Relief

(a). To grant indispensable injunctive

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1 In 1990, Hurley "arranged" a political Quid Pro Quo in the case below with the state Judge; details set forth in Appendix "G."

relief, protecting Estate horses, and debtor in possession's possession of the Estate horse farm, from ongoing criminal trespass by Hurley

(b). To help bring a ruinous 14 year Real Estate controversy to a close.

(c). To help assure this shall never happen again, to any minority and/or disabled person (of which petitioner is both.)

(d) To head off another constitutional crisis three (3) years from now, when Hurley will then claim "title" to the farm through "adverse possession" under the states ten (10) year Statute of Limitations law.

(e). And last but not least, to prevent a miscarriage of justice, from becoming an even bigger miscarriage of justice.

CONCLUSION

Since possession is an independent property interest (independent from title) which is fully protected under the Automatic Stay 11USC362(a)(3), petitioner is entitled as a matter of

equal protection to have that possession ptotected.

WHEREFORE, petitioner respectfully requests that this Court grant Certiorari Review of the Questions Presented.

Dated January 6, 2002

Respectfully submitted,

RALPH URBAN, debtor/petitioner
PO Box 1010, Cooper Square Station
New York, New York 10276

Appendix A
United States Court of Appeals
FOR THE
SECOND CIRCUIT
at the United States Courthouse, Foley Square, in the City of NewYork on the 12th day of October two thousand and one,

Hon. JonO.Newman,
Hon. Amalya L. Kearse ,
Circuit Judges, (Filed October 13, 2001)
Hon. Gregory W. Carman,
Chief Judge, Court of Int'l Trade.

Present:

Ralph Urban,

Debtor-Appellant,

v.

Beverly Olevnik, Stanley Olevnik, Linda Haag, William C. Hurley, Defendant-Appellee.

01-5039

Appellant appeals from the decision of the district court affirming two orders of the United States Bankruptcy Court for the Southern District of New York, one transferring venue and one denying leave to amend a complaint. This Court has determined, sua sponte that it lacks J^diction over this appeal because the bankruptcy court orders were non-final within the meaning ot 28 USC § 158. See In re Chateaugay Corp. 922 F.2d 86 (2d Cir. 1990) (this Court lacks jurisdiction to hear an appeal from an interlocutory bankruptcy order). Therefore, it is ORDERED that the appeal is dismissed.

October 12, 2001

FOR THE COURT:
Roseann B. MacKechnie, Cleric

APPENDIX B

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Filed 5-10-01)

RALPH URBAN,

Plaintiff-Appellant,

- against –

WILLIAM C. HURLEY, COUNTY OF YATES, et al.,

Defendant-Appellees.

00 Civ. 7893 (RWS) OPINION

AND ORDER

APPEARANCES:

RALPH URBAN
Plaintiff-Appellant Pro Se
P. 0. Box 1010
New York, NY 10276

SHAPIRO, ROSENBAUM, LIEBSCHUTZ & NELSON
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665 Fifth Avenue
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By: WILLIAM LEE KINNELLY, ESQ.
Of Counsel

Sweet, D.J.,

Appellant/Debtor Ralph Urban, prose ("Urban"), appealed from two orders of the Bankruptcy Court entered August 24, 2000, the first transferring an Adversary Proceeding, AP No. 91-6570A (the "Adversary Proceeding") to the Western District of New York (the "Venue Order") and the second denying the motion to amend the complaint in the Adversary Proceeding removing the County of Yates as a party to the Adversary Proceeding (the "Amendment Order"). For the reasons which follow, the appeal is dismissed,) the Venue Order and the Amendment Order are affirmed.

As will become apparent, the administration of this appeal has been complicated by Urban's pro se status and his submissions which fail to focus on the role of this Court and instead return to his underlying grievance relating to certain property transactions in 1988 and thereafter relating to real estate in Yates County at one time owned by Urban, including a number of related state court proceedings turning on the effect and timing of transfers of the property. The concern of this Court will be limited to the order appealed from and certain other proceedings initiated by Urban.

The Proceedings Before This Court

On October 17, 2000, Urban filed a notice of appeal from the Venue Order and the Amendment Order entered by the Honorable Prudence Carter Beatty, Bankruptcy Judge in the Chapter 11 proceeding, 91 B. 15142 (PCB) initiated by Urban. On October 24, 2000, a scheduling order was entered granting Urban thirty days to serve his brief.

Urban's brief was docketed on November 27 and received in chambers on December 12, 2000. On December 15, Urban filed a brief designated "Reply Brief." On December 29, 2000, Urban filed a motion to recall the file in the Adversary Proceeding.

On January 9, 2001, the Appellee, William C. Hurley ("Hurley") filed his brief with the Court. On February 2, 2001, Urban sought a thirty-day extension to reply to Hurley's "Second Brief." On February 21, Urban sought a sixty-day delay for the same purpose.

By order of March 8, 2001, this Court directed Urban to file his reply brief by March 30, 2001. On April 2, Urban filed "Appellant's Interim Reply Brief to Hurley's Illeagal [sic] 2nd Opposition Brief." The appeal was considered fully submitted at that time.

During this period, on January 9, 2001, Urban moved for an injunction to stay the Bankruptcy Court in the Western District and for sanctions. On January 22, Urban filed a motion for contempt against Hurley and another motion for a stay and injunction on January 16, followed by a similar motion on February 2, 2001 seeking contempt and a preliminary injunction. On February 15, 2001, Urban filed a notice of appeal to the Court of Appeals "from the inaction, failure, or refusal of the lower court (U.S. District Court/SDNY) to Stay or Enjoin the lower/lower court (U.S. Bankruptcy Court/SDNY) ..." (underlining in original). On March 14, another notice of appeal to the Court of Appeals was filed, and the record was forwarded to the Court of Appeals.

On April 12, this Court directed Hurley to reply to the Urban motions by April 18, 2001. On April 23, Urban applied to extend the time to reply to April 30, at which time all matters were considered submitted including a cross-motion by Hurley to strike personal epithets against him and to enjoin personal attacks in the future. The Jurisdiction Of This Court

Although Urban has filed two notices of appeal to the Court of Appeals, jurisdiction has remained in this Court, no final decision having been rendered by the district court, 28 U.S.C. § 1291, and no /appealable interlocutory order having been entered, 28

U.S.C. § 1292. Consequently, the issues before this Court will be resolved.

The Venue Order Is Affirmed

A district court's jurisdiction to review orders of the Bankruptcy Court is governed by 28 U.S.C. § 158(a), which states:

The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders and decrees; (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and (3) with leave of the court from other interlocutory orders and decrees.

A final order is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States. 324 S.Ct. 229, 233, 89 L.Ed. 911, 65 S.Ct. 631 (1945). The concept of finality is more liberally construed in the bankruptcy context than in ordinary civil litigation. In re Prudential Lines, Inc.. 59 F.3d 327 331 (2d Cir. 1995). A Bankruptcy Court order is not considered final however unless it necessarily resolves all of the issues pertaining to a discrete claim. In re Fuqazy. 982 F.2d 769, 775 (2d Cir. 1995); In re Flor. 79 F.3d 281, 283 (2d Cir. 1996).

An order transferring venue of an adversary proceeding relating to a case under Chapter 11 is not a final order, and

therefore leave to appeal is necessary. See, In re Dalton, 733 F.2d 710, 714 (10th Cir. 1984) . cert. denied. 469 U.S. 1185 (1985); In re Butcher. 1998 U.S. Dist. LEXIS 15293 (E.D. Mi. 1998); In re Landmark Capital Company. 20B.R. 220 (S.D.N.Y. 1982). A number of courts have held that leave should not be granted to permit the appeal of an order transferring venue of an adversary proceeding. see.' Americare Health Group, Inc. v. Melillo. 223 B.R. 70 (E.D.N.Y. 1998); In re Butcher, supra.

This Court generally applies the standard governing interlocutory appeals from the district courts when determining whether to grant an interlocutory appeal from a decision of the bankruptcy court. Escondido Mission Villaoe v. Best Prods. Co.. Inc. , 137 B.R. 114, 116 (S.D.N.Y. 1992). Under that standard, leave to appeal from an interlocutory order will be granted only if the order involves a "controlling question of law." Escondido, supra, 137 B.R. at 116; see also Fisher v. 47th Street Photo. Inc.. No. 92 Civ. 6529, 1993 WL 126525 (S.D.N.Y. April 22, 1993). Leave to appeal from interlocutory orders should be granted only in "exceptional circumstances." In re Ionosphere Clubs. Inc.. 179 B.R. 24, 28 (S.D.N.Y. 1995).

Although leave to appeal has been granted in respect to an order transferring venue of a Chapter 11 case. In re Landmark Capital Company, supra, the transfer of venue of a related adversary proceeding is distinguishable. This appeal does not

involve a controlling question of law or exceptional circumstances that would warrant the court granting leave to appeal. The order transferring venue can be and should properly be reviewed at the conclusion of the adversary proceeding. No grounds upon which a conclusion that the venue was improper have been set forth, leave to appeal the Venue Order has not been granted, and the order can be affirmed on that ground.

In any case, the Venue Order was appropriate under 28 U.S.C. § 1412. Transfer of venue pursuant to 28 U.S.C. § 1412 is discretionary, and the party moving to attack venue must establish its burden by a preponderance of evidence. In re Vienna Park Properties, 125 B.R. 84, 87 (S.D.N.Y. 1991) (citations omitted). Whether the interests of justice and the convenience of parties would be served requires "a consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness--factors." In re Manville Forest Products Corp.. 896 F.2d 1384, 1391 (2d Cir. 1991). The decision of whether or not to transfer a case under 28 U.S.C. § 1412 is within the sound discretion of the court, id. , 1390-91; In re Finlev. et al.. 149 B.R. 365, 368 (1993 S.D.N.Y.).

The Adversary Proceeding at issue involves a dispute as to the title of property located in Yates County, New York, and the validity and effect of two deeds from Urban to certain individuals, Haag and Tuttle, as well as the propriety of a tax foreclosure sale

on the subject property. The Bankruptcy Court was faced with the fact that the property is situated in the Western District of New York, and all the defendants reside in the Western District of New York, and found that:

[I]t [was] simply too far removed from the locus of the property to quell the disturbance caused by the tax sale and the court remains convinced that any resolution of the dispute must occur in a court with subpoena power over the necessary parties to the litigation. Memorandum Statement of Status, supra, at page 6.

In this case all of the Manville Forest considerations, except the proximity of Urban to the Court, favor a transfer of venue to the Western District of New York. The numerous creditors who are parties to the Adversary Proceeding are all located in the Western District of New York 1; all the party and non-party witnesses are located in the Western District of New York; and the property that is the subject matter of this litigation is located in the Western District of New York.

The Bankruptcy Court determined that the litigation can be most economically and efficiently concluded in the Western District of New York and that finding is amply supported by the record. The Venue Order is affirmed.

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1. Of critical importance apparently will be the testimony of Haag regarding the intent of the parties with respect to the original deed and the so-called "correction deed "

The Amendment Order Is Affirmed

The Bankruptcy Court's August 24, 2000 Amendment Order (the "Amendment Order") did two things: first, it denied Urban leave to amend his complaint because his modification asserted a fact, the opposite of which the Court relied on in a previous ruling; second, it maintained Yates County as an appropriate party. For the reasons described below, the Amendment Order is affirmed.

The refusal of the Bankruptcy Court to grant leave to amend is reviewable under an abuse of discretion standard. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 32, 331-32 (1971); Ruffolo v. Oppenheimer & Co.. 987 F.2d 129, 131 (2d Cir. 1993) . There is support for the proposition that when a court bases its denial on a legal conclusion that the amended pleading would not withstand a motion to dismiss, its ruling may be reviewed de novo (Fisher v. Roberts. 125 F.3d 974, 977 (6th Cir. 1997)). However, here the Bankruptcy Court denied the motion to amend based upon its own previous ruling and a determination that Yates County was a necessary party. Since neither of those determinations is a legal conclusion that the amended pleading would not withstand a motion to dismiss, it follows that the denial of leave to amend is subject to review under the less rigorous abuse of discretion standard.

The Amendment Order Properly Denied Amendment Of A Fact Previously Relied Upon By The Court'"

Urban sought to amend his complaint to add an additional cause of action to recover the entire parcel of his disputed property which the initial complaint sought only to recover a portion. The Bankruptcy Court previously granted Urban's motion to reject a contract for sale of the same property to Hurley upon which Hurley had obtained a judgment of specific performance, predicated upon a finding by the Bankruptcy Court that the property had been conveyed by Urban to Haag and Tuttle. The amendment would seek to negate the deed to Haag and Tuttle upon which the earlier ruling was predicated. The Bankruptcy Court denied leave to amend the complaint on the basis that its earlier ruling rendered the additional claim futile, explaining as follows:

In the amended complaint the Debtor sought to set forth a theory under which he was the owner of the entire parcel. If the Debtor had asserted that position at the time early in this case when this court was requested to permit the rejection of the contract of sale to Hurley, this court would not have granted the requested rejection. The Debtor's rejection motion was predicated on several grounds including that he did not in fact have title to convey and this court relied heavily on that fact in granting the motion.

Memorandum Statement of Status, dated August 24, 2000, at page 4.

As a matter of judicial estoppel, the Bankruptcy Court properly denied Urban's motion for leave to amend. See. Mitchell

v. Washington Central School Dist.. 190 F. 3d 1, 6 (2d Cir. 1999) (stating that "[j]udicial estoppel 'prevents a party from asserting a factual position in a legal proceeding that is contrary to a position previously taken by that party in a prior legal proceeding.'" (quoting Bates v. Long Island R.R. Co.. 997 F.2d 1028, 1037 (2d Cir.)). The Amendment Order Properly Maintained Yates County As An Appropriate Party

Rule 21 of the Federal Rules of Civil Procedure applies in a bankruptcy case pursuant to Bankruptcy Rule 7021. Rule 21, Fed. R. Civ. P. provides that "parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." (emphasis added). The court may add parties, drop parties and sever any claim against a party. The court has broad discretion in determining whether to add or drop parties. See. New York v. Hendrickson Bros.. Inc.. 840 F.2d 1065, 1082 (2d Cir.) cert. denied, 488 U.S. 848 (1988); Glendora v. Malone. 917 F. Supp. 224, 227 (S.D.N.Y. 1996). The court may add or drop a party because of mis joinder of the party or failure to join a necessary party (non-joinder), or to promote the efficient administration of justice. See, Applewhite v. Reichhold Chems., Inc.. 45 F.2d 571, 574 (5th Cir. 1994). i

Yates County was originally named as a party to this action, but was dropped as a party by Urban's amendment of the complaint without leave. Urban subsequently moved to amend the complaint to assert an additional claim against Hurley and to include a claim against the County arising from the post-petition tax foreclosure sale. The Bankruptcy Court never ruled on the motion to amend the complaint, because it dismissed the Adversary Proceeding on other grounds, and the issue was not addressed upon remand. Urban brought a subsequent motion to amend the complaint that did not include the County as a defendant, but the debtor continued to serve the County with all papers and pleadings.

The Court, in its Order Denying Debtor's Motion To Further Amend Complaint, held:

WHEREAS, by virtue of Yates County having been treated as a party to this adversary proceeding in the Debtor's Notice of Motion, this Court's August 1996 ruling, the Debtor's appeal of that ruling, and the District Court's decision thereon, Yates County is deemed to be a party to this adversary proceeding and the complaint will be treated as if it were so amended.

Urban seeks to obtain a determination that he holds legal title to the 75 acres. However, Haag's interest in the property was foreclosed by the County. If the outcome of the Adversary Proceeding is not binding on the County because the County has been denied a full and fair opportunity to litigate the matter, it will not be binding on Hurley because the County precedes him in the

chain of title, and the debtor will not be able to obtain title to the property. The County of Yates is therefore a necessary party to the final resolution of the title controversy. The BankruptcyCourt properly exercised its discretion in adding Yates County as a party.

The Additional Relief Sought By Urban Is Denied

Perhaps because Urban is pro se. there appear to be pending requests for relief in this Court, some of which do not appear on the docket. They include a motion for recall of the file of the Adversary Proceeding dated December 29, 2000, a motion for stay or injunction and sanctions against the County dated January 5, 2001, a motion to reject and return a certain opposition by Hurley dated January 11, 2001, a motion for contempt against Hurley based upon "Hurley's ongoing rape of that land," dated January 11, 2001, a motion for a stay, an injunction and criminal complaint against Hurley for theft of trees, dated January 14, 2001, a motion for contempt against Hurley, stay or injunction dated February 2, 2001, and a motion for disciplinary action, designated "as a Follow Up Motion," dated March 14, 2001. Certain other relief is sought in the Court of Appeals.

No cognizable claim for relief in this Court is set forth in these motions which principally recite certain allegations relating to what appears to be a 13-year old dispute between Urban

and Hurley, ranging across a number of courts. The motions are therefore dismissed and the stays are denied, including any effort to stay any pending depositions in the Adversary Proceeding.

The Cross-Motion Is Granted

Urban has filed pleadings and memoranda characterizing Hurley as "sick," "criminally inclined," "cruel," "vicious," a "compulsive liar," a "heathen" and a "nazi." (Objection to Hurley's Request to File a 3rd Reply Brief, Pars. 5, 6, 7). These epithets are stricken, and Urban is directed to desist the use of these and similar terms and warned that such conduct may be sanctioned under Rule 11, Fed. R. Civ. P.

Conclusion

The Venue Order and Amendment Order entered in the Bankruptcy Court August 24, 2000 are affirmed. All other motions by Urban are denied.

It is so ordered.

New York, NY
May 10 , 2001

/s/
ROBERT W. SWEET
U.S.D.J.

APPENDIX C

Memo Endorsement

This order to show cause is not signed because a prior order to show cause requesting virtually identical relief was submitted in July 2000 which this court declined to sign (see Document No. 144) because the relief requested can only be obtained by way of an adversary proceeding. Moreover, pursuant to Local Bankruptcy Rule 9077-1 (a), the affidavit in support of an order to show cause must state whether a previous application for similar relief has been made. The Debtor has failed to comply with this rule. The Debtor is directed not to submit any further similar applications, m the event this direction is violated and the Debtor continues to multiply these proceedings in an unreasonable and vexatious manner, sanctions will be imposed. See 28 U.S.C. §1927 .

So Ordered. Dated: New York, New York
August 24, 2000

/s/ Prudence Carter Beattv United States Bankruptcy Judge

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK

In re:

RALPH URBAN,

Debtor.

RALPHURBAN,

96 Civ. 8567 (MBM)
OPINION & ORDER

Appellant,

v.

WILLIAM C. HURLEY, COUNTY OF YATES, et al..

Appellees.

Appeal from Bankruptcy Court refusal to grant injunctive relief, and other orders and decisions.

FILED 1-12-98

Hon. Michael B. Mukasey, USDJ, presiding.

MICHAEL B. MUKASEY, U.S.D.J.

Ralph Urban, debtor pro se. appeals from the Bankruptcy Court's refusal to void a tax foreclosure sale of certain real property in which Urban claims an ownership interest. Urban contends that the sale is void by operation of the automatic stay imposed by § 362(a) of the Bankruptcy Code (the "Code"), 11 U.S.C. § 362(a) (1994), and that Yates County, the seller of the property, and William Hurley, the buyer, are liable for damages and sanctions under for having willfully violated the automatic stay imposed. See 11 U.S.C. § 362(h) (1994). For the reasons stated below, the appeal is dismissed in part and the case is remanded to the Bankruptcy Court for further factual findings.

I.

Most of the long and complicated factual background of this case is set forth in two earlier opinions of the Bankruptcy Court. See In re Ralph Urban. 202 B.R. 565 (Bankr. S.D.N.Y. 1994) (nUrban I"); In re Ralph Urban. No. 91-B-15142, slip op. (Bankr. S.D.N.Y. March 27, 1997) ("Urban_II"). The facts relevant to this appeal may be stated more briefly. In early 1984, Urban purchased a 103-acre parcel of land located in Yates County, New York.1 Urban I. 202 B.R. at 566. In March 1988, Urban entered into a contract ("sales contract") to sell 100 acres of this property to Hurley. Id^. at 567. For reasons not

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'Yates County is located in the Western District of New York, and is situated approximately halfway between Rochester and Binghamton.

entirely apparent. Urban never completed the sale, prompting Hurley to record a lis pendens against the property and eventually to file a breach of contract action against Urban. Id. at 568.

In mid-1988, Urban contracted to sell 75 acres of the property to Linda Haag and Gerald Tuttle. (Pi. Ex. C) Urban conveyed title by warranty deed ("original deed"), which stated that he had transferred 75 acres to Haag and Tuttle and retained 28 acres for himself. (Id.) The deed was recorded in the relevant land records. Urban claims that a few months later he "bought back" two of the 75 acres. (PI. Mem. at 4) Accordingly, in December 1988, Urban and Haag recorded a "correction deed," which reserved 30 acres for Urban and transferred the remaining 73 acres to Haag and her three sons.2 (Pi. Ex. D) The correction deed contained a cancellation clause making the transfer subject to the lis pendens recorded by Hurley, fid.)

While Urban was in the process of transferring his property to Haag, he was also defending the lawsuit brought by Hurley as a result of the failed sales contract. In March 1990, Hurley and Urban entered into a court-approved stipulation pursuant to which Urban agreed to perform on the sales contract. Urban I. 202 B.R. at 568. Of course, the difficulty with this arrangement was that Urban had already sold a large portion of his property to Haag. It is unsurprising, then, that Urban never

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2 apparently, because Tuttle had since died, he was not named a title-holder in the corrective deed. (Pi. "Amended Plan" at 1)

complied with the stipulation. Id. However, for his part, Hurley never earnestly sought to have the stipulation judicially enforced. Id. at 569.

Meanwhile, Haag was suing Urban in state court to recover the down payment she had made on the purchase of the property. Id. Although the court awarded Haag a money judgment in an amount equal to her down payment, the judgment did not divest her of title in the land. Id. It is unclear whether Urban ever satisfied this judgment.

In 1991, faced with Haag^s money judgment and Hurley's pending suit. Urban enlisted the protection of the bankruptcy court. After unsuccessfully petitioning for relief under Chapter 7 of the Code in the District of Delaware, on November 13, 1991, Urban petitioned for and received protection under Chapter 11 in this district. Urban II. slip. op. at 3. He gives as his address a post office box in Manhattan. Inexplicably, after filing for Chapter 11 protection. Urban then filed a petition for relief under Chapter 13 of the Code. That petition was dismissed. Id. In a March 1994 opinion, the Bankruptcy Court found that Urban^s estate was not liable for a $15,000 claim filed by Hurley for breach of the sales contract. Urban I. 202 B.R. at 572.

In June 1994, Yates County foreclosed on Haaq's property for failure to pay real estate taxes. Urban II. slip op. at 5. Hurley purchased the property at the ensuing foreclosure sale. Id. The foreclosure deed he received from

Yates County stated that the property consisted of 75 acres, rather than 73 acres. (Def. Mem. Ex. D) According to Urban, the two additional acres are part of the 30 acres he had reserved in the correction deed. (Pl. Reply Mem. at 1-2) He claims that Yates County misidentified the property by negligently relying on the original deed, rather than the correction deed, in conducting the foreclose sale. (Pl. "Amended Plan" at 1)

Between 1994 and 1996, Hurley and Urban — by then neighbors — engaged in a bitter and sometimes violent feud over the ownership of the two disputed acres. In August 1996, Urban sought to have the Bankruptcy Court referee this feud by amending an earlier complaint he had filed against Hurley to include claims for "aggravated harassment," "criminal trespass," and "grand larceny." In addition. Urban moved the Bankruptcy Court to: (1) "[v]acate" the foreclosure sale on the grounds that Yates County had violated the automatic stay imposed by § 362(a) of the Code by selling a portion of his property; and (2) compel Hurley to "cease and desist" trespassing "upon [e]state [p]roperty."

At a hearing on August 14, 1996, the Bankruptcy Court refused to get involved in the dispute between Hurley and Urban. First, the Court held that voiding the sale or changing the terms of the foreclosure deed would be impossible without joining Yates County, the grantor of the deed. (8/14/96 Tr. at 3) However, the court determined that it could not exercise jurisdiction over Yates County because the county was immune from bankruptcy

jurisdiction under Seminole Tribe of Florida v. Florida. —— U.S.——, 116 S. Ct. 1114 (1996). Second, the Court held that, assuming Seminole did not apply, it still would not take jurisdiction over Yates County because it did not sit in the district in which the county was located. (8/14/96 Tr. at 3) Finally, the Court held that, even if there were no jurisdictional impediments, it would not get involved in a dispute over property that did not appear to be part of Urban's estate. (8/14/96 Tr. at 4) After encouraging Urban to pursue his claims in state court, the Court denied his motions and closed the adversary proceeding, fid. at 6-10) Although it is not clear from the record, according to both Urban and Yates County, the Court also denied Urban's request for sanctions against Hurley. (PI. Reply at 5; Def. Mem. at 1)

Urban appeals the Bankruptcy Court's decision to this court pursuant to 15 U.S.C. § 158 (1994), naming both Hurley and Yates County as appellees.3 Although his arguments are difficult to follow and have shifted over the course of this appeal, he appears to raise two principal claims: (1) that the foreclosure sale violated the automatic stay imposed by § 362(a) of the Code because he had at least a partial ownership interest in the foreclosed property (PI. Mem. at 7); and (2) that Hurley and

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'After appealing to this court. Urban filed a motion in the Bankruptcy Court again seeking rescission of Hurley's foreclosure deed. Construing this motion as a request for reconsideration of its earlier decision, the Court held that it did not have jurisdiction to revisit that decision because Urban had already appealed it to this court. Urban II. No. 91-B-15142, slip op. at 10.

Yates County are liable for damages and sanctions for their allegedly willful violation of the automatic stay. (Id. at 1) Yates County is the only party to respond to Urban's appeal.

II.

A. The Case Must Be Remanded for Further Fact Finding

On appeal in a bankruptcy case, a bankruptcy court's conclusions of law are reviewed de novo and its findings of fact for clear error. In re Bonnanzio. 91 F.3d 296, 300 (2d Cir. 1996). In this case, the bankruptcy court essentially reached two conclusions of law. The first was that it did not have jurisdiction over Yates County under Seminole Tribe. Yates County does not defend this conclusion. Indeed, Seminole Tribe stands for the proposition that Congress cannot abrogate a state's Eleventh Amendment rights by legislating pursuant to its Article I powers over commerce. See Mills v. State of Maine. 118 F.3d 37, 41 (1st Cir. 1997). Seminole Tribe did not overturn the well-established rule that political subdivisions of a state, such as counties, generally do not enjoy Eleventh Amendment protection. See Regents of the Univ. of California v. Doe, —— U.S. ——, ——, 117 S. Ct. 900, 904 n.6 (1997); Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977). Contrary to the holding of the Bankruptcy Court, there is also nothing in Seminole Tribe precluding bankruptcy courts from exercising jurisdiction over political subdivisions. See In re S.E.L. Maduro (Florida). Inc.. 205 B.R. 987, 993 (Bankr. S.D.

Fla. 1997) (post-Seminole case in which court holds that payments made by debtor to county are voidable as preferences).

The Bankruptcy court's second legal conclusion that it would not exercise jurisdiction over Yates County because it did not sit in the judicial district in which the county was located — is more defensible and essentially points up a problem with venue in this case. Under 28 U.S.C. § 1408(1), a bankruptcy case may be commenced in the district in which, for the preceding 180 days or the greatest portion thereof, the debtor resided, was domiciled, had a principal place of business, or held his principal asset. Based on the record before me, it does not appear that Urban was domiciled or resided in the Southern District of New York, nor does it appear that he had a place of business here. Certainly the principal asset, or at least the centerpiece of this litigation, the Yates County property, is not located in the Southern District. The only tie Urban seems to have established to this district is a post office box. This does not qualify as domicile or residence.

To be sure, in an absolute sense, the Code may give the bankruptcy court authority over a county located in another district. See 28 U.S.C. § 1334(e) (1994) (bankruptcy court has jurisdiction over debtor's property, wherever located). However, I sympathize with the Bankruptcy Court's reluctance in this case to take jurisdiction over a distant county, or to get involved in a title dispute over real property located in another district. Fortunately, if this case was improperly filed in the Southern

District, there is a mechanism for rectifying the problem. Section 1412 of Title 28 authorizes transfer of a bankruptcy case to the proper district "in the interest of justice . . . ." 28 U.S.C. § 1412 (1994). In this case, the "interests of justice" will be best served by remanding the matter to the Bankruptcy Court to determine if venue is in fact proper in the Southern District. If the Court determines that Urban has not met the requirements for venue set forth in § 1408(1), it should transfer the case to the proper district, likely the Western District of New York, where the Yates County property is located. Although Urban may be reluctant to litigate in the Western District because of the restrictions that court has put in place to prevent him from abusing process, see Urban v. United Farm Real Estate^ Inc., 86 Civ. 623T, slip. op. at 8 (W.D.N.Y. Nov. 5, 1986), this is a problem of Urban's creation and one that Urban will have to resolve should the Bankruptcy Court determine that this case is transferrable.

If, on the other hand, the Bankruptcy Court does find that venue is proper in the Southern District, it should also pause to revisit its third determination — that Urban did not "appear" to have an interest in the foreclosed property. Despite Yates County's indications to the contrary (Def. Mem. at 5), it appears that Hurley received 75 acres, rather than 73 acres, at the foreclosure sale. This suggests that Yates County may have foreclosed on two acres of property that were not contained in the correction deed conveying property from Urban to Haag. If

that is so, and if the correction deed is valid. Urban may have a colorable claim that the foreclosure sale violated the automatic stay imposed by § 362(a). However, answering this question necessitates further fact-finding.

B. There Was No "Willful" Violation of the Automatic Stay

Although it is necessary to remand this case for development of certain important facts, the record is sufficient to dispose of one of Urban's claims -- his request for sanctions. Under § 362(h) of the Code, 11 U.S.C. § 362(h), "an individual injured by any willful violation" of the automatic stay imposed by § 362(a) "shall recover actual damages," including attorney's fees and punitive damages, if appropriate. Urban contends that both Hurley and Yates County were! "fully aware" that he owned either all or some of the land described in the foreclosure deed and that they colluded to deprive him of his rights to that/land by taking part in the foreclosure sale. (PI. Reply at 3) He seeks over $100,000 in "damages, costs, and sanctions" as a result of the appellees' actions. (9/17/97 Letter from Urban)

The fundamental defect in Urban's request is the absence of any evidence that either Yates County or Hurley "willfully" violated the automatic stay. Assuming arguendo that some of Urban's property was actually sold at the foreclosure sale. Urban has failed to demonstrate that Hurley or Yates County knew of this fact or acted willfully despite their knowledge. Indeed, his argument is premised on the assumption that "a negligent bookkeeper" in Yates

County relied on the Haag-Tuttle deed, rather than the correction deed, in preparing the foreclosure deed. (Pl. "Amended Plan" at l) Similarly, notwithstanding Urban's belief that the Hurley behaved in a "scandalous, blatant and willful" manner, there is no evidence that Hurley knew about Urban's claim of ownership in Haag's property or acted willfully to deprive him of that ownership. Accordingly, to the extent that the Bankruptcy Court denied Urban's request for damages, costs, or sanctions under § 362(h) , the decision of the court is affirmed.

* * *

For the above reasons, the case is remanded to the Bankruptcy court to determine: (1) if venue properly lies in the Southern District of New York; and (2) if so, whether Urban had an ownership interest in the foreclosed property. Urban is not entitled to damages or sanctions against Hurley and Yates County.

SO ORDERED:
/s/

Michael B. Mukasey,
US District Judge

Dated: New York, New York
January 12. 1998